



State of New Jersey
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu

IN THE MATTER OF WRIGHTSTOWN)	ORDER APPROVING EXEMPTION
BOROUGH PETITION FOR AN EXEMPTION)	
FROM MAIN EXTENSION RULES)	
AT <u>N.J.A.C. 14:3-8.8(b)(1)</u>)	Docket No. EO09030198

(SERVICE LIST ATTACHED)

BY THE BOARD:

By this Order, the Board considers a request by the Wrightstown Borough located in Burlington County, New Jersey (Petitioner) for an exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(b)(1). This section of the rules provides for an exemption from the cost limits on extensions of service in areas not designated for growth for a project that will provide a significant public good. The Petitioner is constructing a firehouse and pedestrian crosswalk in the Wrightstown Borough.¹ The Petitioner is a municipal entity founded in 1917 located directly outside the gates of Fort Dix and McGuire Air Force Base. The entire Wrightstown Borough is in an area not designated for growth. In a letter dated October 15, 2008, the Mayor of Wrightstown Borough, the Honorable Thomas Harper petitioned the Board for an exemption under N.J.A.C. 14:3-8.8(b)(1), a significant public good exemption.²

Petitioner seeks relief from the rules which would otherwise require the Petitioner to pay the entire cost of installing electric service to the firehouse and crosswalk.

The cost from JCP&L for the firehouse is \$21,273.35 to relocate a pole to accommodate a new driveway, install a new pad-mounted transformer and extension of a 3-phase underground primary from the overhead service on Saylor's Pond Road to the firehouse.

¹ Although the Wrightstown Borough initially referenced a municipal building in its petition, it presented work orders and arguments as to the firehouse and crosswalk only. In consultation with Staff, the Borough has determined that the municipal building will not be included in this application and will not be considered by the Board at this time.

² The October 15, 2008 letter further indicated that the town qualifies for an extreme hardship exemption, N.J.A.C. 14:3-8.8 (b) (2). For the reasons set forth below, the Board will not evaluate the extreme hardship exemption request here.

The firehouse project has been completed under protest subject to the Board's determination regarding this Petition. The cost from JCP&L for the signals at the crosswalk is \$619.46.

The Petitioner submits that it is exempt from the requirements for the costs of the extension pursuant to N.J.A.C. 14:3-8.8(b)(1), because the project will provide a significant public good, as described in N.J.A.C. 14:3-8.8(h). N.J.A.C. 14:3-8.8(h) provides that to obtain an exemption based on significant public good, a Petitioner must demonstrate to the Board that all of the following criteria are met: (1) the project or activity served by the extension would provide a significant benefit to the public or to the environment; (2) the project is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth; and (3) there is no practicable alternative means of providing the benefit while still complying with this subchapter. In assessing criterion two (2), the Board must consult with the Office of Smart Growth and other State agencies.

The Petitioner presents the following as to each criterion in N.J.A.C. 14:3-8.8(h):

1. Whether the Project or Activity Served by the Extension will Provide a Significant Benefit to the Public or to the Environment

Petitioner argues that the firehouse and pedestrian crosswalk in Wrightstown will provide a significant public health and safety benefit. "The [firehouse] is for the benefit of the public and the crosswalk for the safety of our children." The firehouse will be a "non-profit, publicly supported facility whose mission includes protecting residents from electrical fires."

2. That the project ... is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth. In making this determination, the Board will consult with the Office of Smart Growth and other State agencies

Here, Petitioner states that the firehouse is located within the Wrightstown Borough. Petitioner states that much of the area surrounding the Borough is in Agricultural Preservation. The Borough is "a fully improved municipality with water and sewer services and is not in agriculture at all." The firehouse is located specifically on lands reserved for municipal construction since 1958.

Petitioner argues that it is a New Jersey developed community established in 1917 that serves as a municipal or town center for the two military bases, Fort Dix established around 1917 and McGuire Air Force Base established in 1946 and surrounding communities. Wrightstown further asserts that it is currently seeking a "Town Center" designation through the Office of Smart Growth.

3. There is no practicable alternative means of providing the benefit while still complying with this subchapter

Petitioner states that there is no practicable alternative means as Wrightstown Borough is the gateway to the Mega Base. It is and was a town prior to the State's Planning Area Designation. The Borough is a small town which is entirely located in a non-growth area; there are no other lands where the Borough could place its firehouse and other municipal buildings to serve the residents. The current fire house is insufficient to house modern fire fighting equipment and is otherwise in need of significant repairs. The Borough has determined that due to its condition, the existing firehouse building will be demolished.

The area where the crosswalk will be built is currently used by school children who need to cross at the intersection of Byron Drive and Fort Dix Drive.

The following steps were taken by Board Staff and are part of the record that the Board has reviewed.

Pursuant to the requirement in N.J.A.C. 14:3-8.8(h)(2), Staff consulted with the Office of Smart Growth. Benjamin Spinelli, Executive Director of the Office of Smart Growth, has identified that Wrightstown Borough is located in a Planning Area 4 and Pinelands as provided by the New Jersey State Development and Redevelopment Plan (State Plan). As such it is not located in an area designated for growth.

Director Spinelli's April 27, 2009 letter states,

As it relates to providing an exemption in accordance with N.J.A.C. 14:8.8(h), OSG has determined the following:

The project served by the extension would provide a significant benefit to the public and the environment in that it is consistent with *Goal 1: Revitalize the State's Cities and Towns* of the State plan. This project would improve the livability of Wrightstown by investing in a firehouse and municipal building including a crosswalk to increase the walkability of residents. This project is also consistent with *Goal #5: Provide Adequate Public Facilities and Services at a Reasonable Cost*. The strategy of Goal 5 is to provide infrastructure and related services more efficiently by supporting investment based on comprehensive planning and by providing financial incentives for jurisdictions that cooperate in supplying public infrastructure and share services. It should be noted that Wrightstown Borough has been engaging the Office of Smart Growth regarding Plan Endorsement and center designation/TDR receiving area not only alone but in conjunction with neighboring municipalities.

Furthermore, these projects are located in the developing downtown section of Wrightstown and are consistent with smart growth principles. OSG also believes that there are no practical alternative means of providing this benefit.

DISCUSSION:

The Board's jurisdiction over utility extensions is found at N.J.S.A. 48:2-27, which provides that the Board "may ...require any public utility to establish, construct, maintain and operate any reasonable extension," where the extension is: (1) reasonable and practicable; (2) will furnish sufficient business to justify the construction; and (3) when the financial condition of the public utility reasonably warrants the original expenditure. In considering the requested exemption, the Board adopted rules concerning the extension of service at N.J.A.C. 14:3-8.1 et seq.

The Board has reviewed the recommendation of the OSG, where it notes that the entire Borough is located in a Planning Area 4 or Rural Planning Area. OSG further notes that the provision of infrastructure and related services at a reasonable cost in consideration of comprehensive planning is an important goal of Smart Growth.

Here, it can be argued that the public safety benefits of having adequate fire protection located nearby residential developments outweighs the potential negative impact on the achievement of the State's smart growth goals. While the principals of smart growth would focus future development into areas designated for growth, there clearly needs to be fire protection and public safety services to areas already developed. The Board notes that the firehouse is being built to serve an existing community and is not necessitated by increased growth. See In the Matter of the Board of Fire Commissioners of Fire District #1 Freehold Township – Exemption from Smart Growth Regulations at N.J.A.C. 14:3-8.8(a)(5), BPU Dkt. GO05080718, September 19, 2005 (noting that public facility extensions necessitated by growth have ample notice of the spirit and letter of the law).

The Board therefore FINDS that the public good served by the firehouse and pedestrian cross walk constitutes a public good for purposes of the Main Extension Rules.

Therefore, the Board FINDS that benefit of this project is consistent with and outweigh any negative impacts on Smart Growth.

Additionally, because the Wrightstown Borough is entirely located in a Planning Area 4 – Rural Planning area and there is no practicable alternative means of providing a firehouse for this town, within the town. Further, safety signals at a crosswalk must be placed at the appropriate intersection. Therefore, the Board FINDS that there is no practical alternative of providing the benefit while still complying with the rules.

As to the remaining statutory requirements, the Board must ascertain that the financial condition of the utility warrants the expenditure and whether the extension will furnish sufficient business to justify the expense. Jersey Central Power and Light was sent a letter on April 24, 2009. Jersey Central Power and Light responded to this request on May 5, 2009 by providing the breakdown of refundable vs. non refundable costs and concluded their letter with a review of the consumption versus cost as follows:

"A review of its usage consumption [for the fire house] since December 2008 revealed that this service account has an average monthly usage of 2,266 Kwh or about \$156 monthly "distribution revenues", as defined in Smart Growth regulations. Based on this usage level, it would take four to five years for JCP&L to recover the overhead equivalent line extension and transformer costs associated with this project."

After reviewing the exemption petition, the Board FINDS that the criteria set out in the rules at N.J.A.C. 14:3-8.8(b)(1) for a project that will provide a significant public good are met.

Specifically, the Board FINDS as follows: (1) the construction of the Wrightstown Borough firehouse and pedestrian crosswalk will constitute a significant benefit to the public; (2) that benefit to the public of the extension to upgrade the electric service to the support the Wrightstown Borough firehouse and pedestrian crosswalk is consistent with and outweighs potential negative impacts on smart growth; and (3) because the geographic location of Wrightstown, which is entirely located in a Planning Area 4 – Rural Planning Area, there is no practicable alternative means of providing a firehouse for this town, within the town, while still complying with the rules. Additionally, safety signals must be placed where children will likely cross the street. Therefore, the Board HEREBY GRANTS the exemption from the Main Extension Rules pursuant to N.J.A.C.14:3-8.8(b)(1) for an extension of electric service to the Wrightstown Borough firehouse at 21 Saylors Pond Road and the pedestrian crosswalk at Byron Drive and Fort Dix Drive Wrightstown, Burlington County, New Jersey.

As the Board has determined that an exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(b)(1) is appropriate, the Board need not examine whether Petitioner would otherwise be entitled to an exemption pursuant to N.J.A.C. 14:3-8.8(b)(2). Additionally, the Board takes no position on any future exemption request in the Borough of Wrightstown, for any additional structures, including any proposed municipal building.

Pursuant to N.J.A.C. 14:3-8.8(j)(3), the Board is to determine the distribution of costs for the extension at the time of approval of the exemption based on significant public good. Therefore, the Board HEREBY ORDERS that the distribution of costs of extending electric service to the Wrightstown Borough firehouse and pedestrian crosswalk shall be governed by the requirements at N.J.A.C. 14:3-8.7 for extensions that serve a designated growth area.

DATED: 6/10/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

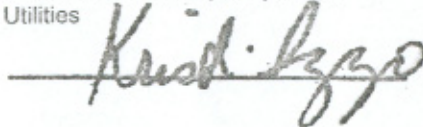

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF WRIGHTSTOWN BOROUGH PETITION FOR AN EXEMPTION
FROM MAIN EXTENSION RULES AT N.J.A.C.14:3-8.8(b) (1)

Docket No. EO09030198

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